

# Supreme Court of Kentucky


## ORDER

**IN RE: ORDER APPROVING THE LOCAL RULES OF PRACTICE AND  
PROCEDURE FOR THE 23RD JUDICIAL CIRCUIT COURTS,  
ESTILL, LEE, AND OWSLEY COUNTIES**

Upon recommendation of the Circuit Judge of the 23rd Judicial Circuit,  
and being otherwise sufficiently advised,

The Local Rules of Practice and Procedure for the 23rd Judicial Circuit,  
Estill, Lee, and Owsley counties, are hereby approved. This order shall be  
effective as of the date of this Order, and shall remain in effect until further  
orders of this Court.

Entered this the 13th day of June 2017.

  
CHIEF JUSTICE JOHN D. MINTON, JR.

## **LOCAL RULES OF THE 23<sup>RD</sup> JUDICIAL CIRCUIT**

### **RULE 1. INTRODUCTION/ADMINISTRATIVE PROCEDURE**

#### **RULE 101. INTRODUCTION/PREFACE**

Pursuant to the mandate of the Kentucky Supreme Court, these rules are applicable to the Estill, Lee, and Owsley Circuit Courts making up the 23<sup>rd</sup> Judicial Circuit.

#### **RULE 102. EFFECTIVE DATE**

These rules will become effective upon their approval by the Chief Justice of the Supreme Court of Kentucky.

#### **RULE 103. CITATION**

These rules may be cited as “Local Rules of the 23<sup>rd</sup> Judicial Circuit” or abbreviated as “LR23JC.”

### **RULE 2. COURT SCHEDULING/MOTION HOUR/PROCEDURES FOR FILING**

#### **RULE 201. TIMES FOR HOLDING COURT**

(a) During Jury Sessions – On all days on which a Petit Jury reports for duty, Court shall commence at 9:00 A.M., and the Jury shall report at 9:30 A.M.

(b) During Motion Hour/Rule Days – On Motion Hour/Rule Days and all other Court Days on which no Petit Jury reports for duty, Court shall commence at 9:30 A.M. unless otherwise directed by the presiding Judge.

#### **RULE 202. JURY SESSIONS**

There shall be one (1) week per month for each county for Jury sessions unless scheduled otherwise by the presiding Judge or a Special Judge.

#### **RULE 203. REGULAR MOTION HOUR/RULE DAY SCHEDULE**

(a) The Motion Hour/Rule Day for civil cases in the Owsley Circuit Court shall be the first Friday of each month at 9:30 A.M., with pre-pretrial conferences in criminal cases being

conducted at 10:00 A.M.

(b) The Motion Hour/Rule Day for criminal cases in the Owsley Circuit Court shall be the Monday of the first full week of each month at 9:30 A.M.

(c) The Motion Hour/Rule Day for civil cases in the Estill Circuit Court shall be the first Thursday of each month at 9:30 A.M., with pre-pretrial conferences in criminal cases being conducted at 9:30 A.M. and child support criminal contempt matters being heard at 11:00 A.M. after the conclusion of the civil docket.

(d) The Motion Hour/Rule Day for all other child support matters in the Estill Circuit Court shall be the second Thursday at 1:30 P.M.

(e) The Motion Hour/Rule Days for criminal cases in the Estill Circuit Court shall be the Tuesday of the first full week and the fourth Friday of each month at 9:30 A.M.

(f) The Motion Hour/Rule Day for civil cases in the Lee Circuit Court shall be the Wednesday of the first full week of each month at 9:30 A.M., with pre-pretrial conferences in criminal cases being conducted at 10:00 A.M.

(g) The Motion Hour/Rule Day for criminal cases in the Lee Circuit Court shall be the third Friday of each month at 9:30 A.M.

#### RULE 204. CANCELLATION OF MOTION HOUR/RULE DAY

On such occasions where it may be required to cancel the regular Motion Hour/Rule Day, either because of sickness, vacation conflicts, or otherwise, notice of cancellation shall be given as promptly as feasible. On any such cancellations, any cases docketed for hearing on the Motion Hour/Rule Day that was canceled shall automatically be redocketed at the next regular Motion Hour/Rule Day, in the order in which they appeared on the canceled docket, and before any subsequently docketed cases.

#### RULE 205. MOTION DOCKET

Unless otherwise directed by the Court, the following will govern the docketing of Motions:

(a) The Clerk shall keep a Motion Docket on which the Clerk will docket all Motions assigned for hearing on each Motion Hour/Rule Day. All cases must be placed on the Motion Docket by the close of business on the third business day preceding the regular Motion Hour/Rule Day to stand for hearing on the following regular Motion Hour/Rule Day. Any exception to this docketing rule shall be by leave of Court only, and the Clerk is directed to close the Docket for the next Motion Hour/Rule Day at the close of business on the third business day preceding the regular Motion Hour/Rule Day. Any Motion not accompanied by the Notice of Date for Hearing shall be summarily overruled except for good cause shown.

(b) The Motion Docket shall contain the number and style of each case, the nature of the action sought, and the names of the attorneys involved.

(c) The Clerk shall prepare the Motion Docket in sufficient quantity that a copy can be made available to every attorney so desiring one on the day following the close of the Motion Docket.

#### RULE 206. SERVICE OF MOTIONS

Each motion shall be served on opposing counsel and party not represented by counsel and entitled to notice. "Service" shall be by the methods defined in CR 5.02. A copy of each Motion filed shall be served upon the presiding Judge.

#### RULE 207. UNCONTESTED MOTIONS, ETC.

An effort shall be made to dispose of uncontested Motions, Default Judgments, and other matters that can be speedily handled before undertaking hearings on contested Motions.

#### RULE 208. CITATION OF AUTHORITIES WITH MOTIONS

All Motions for which authorities are relied upon shall be accompanied by citations of such authorities. Moving counsel may also accompany any Motion with a brief written Statement or file a Memorandum of Law supporting said Motion. Any party properly served with a Motion accompanied by a Statement or Memorandum of Law supporting said Motion may file a Response containing supporting authorities at or before the time specified in the Notice of Hearing of the Motion. Failure to file a Response to a Motion accompanied by such a Statement or Memorandum may be grounds for denying a request for leave to file such a Response after the time specified for a hearing of said Motion.

#### RULE 209. AGREED ORDERS

If an Agreed Order signed by counsel for all parties affected is submitted to the Clerk before the call of the Motion Docket, counsel need not attend the call of the Motion Docket. All counsel are urged to adopt a reasonable use of Agreed Orders for purposes of obtaining and granting extensions of time, to plead, or otherwise defend.

#### RULE 210. EVIDENTIARY HEARINGS

All matters requiring Evidentiary Hearings shall be heard by special assignment except Contempt Hearings in domestic relations cases, which may be heard without prior assignment.

#### RULE 211. GRAND JURIES

(a) Number and Duration of Service – There shall be empaneled in each County of the Circuit one (1) Grand Jury each year. The Grand Jury shall be empaneled during the same Session as the Petit Jury is empaneled and shall serve for twelve (12) months.

(b) Alternate Jurors – When a Grand Jury is empaneled, fifteen (15) persons shall be selected, qualified, and sworn to serve as Grand Jurors. The last three (3) persons so selected, qualified, and sworn shall serve as alternate Grand Jurors and only be called for further Grand

Jury service if and during the illness or absence of a regular Grand Juror. An alternate Grand Juror shall be called by the Circuit Clerk at the request of either the Commonwealth's Attorney or the Foreperson of the Grand Jury.

(c) Session Dates and Return of Indictments – The Grand Jury in each County shall meet monthly. Each session shall begin on the Monday preceding the first regular Motion Hour/Rule Day in each County, and deliberations shall continue thereafter as necessary. Indictments shall be returned to the Judge on Motion Hour/Rule Days or at such other times as may be reasonably necessary at the discretion of the Court. The Grand Juries in this Circuit shall conduct deliberations as scheduled by the Commonwealth's Attorney's Office.

#### RULE 212. CASE ASSIGNMENTS

(a) Upon return of Indictments, the presiding Judge shall deliver the same to the Clerk.

(b) For purposes of case assignment, offenses may be joined in one Indictment by the Grand Jury pursuant to RCr 6.18, or offenses in multiple Indictments may be joined by the Court pursuant to RCr 9.12. An Indictment naming more than one Defendant shall be considered as one case.

(c) Upon the signing of the Indictments by the Judge, the Circuit Clerk shall make copies of the Indictments and shall mail or deliver same to the Commonwealth's Attorney and, in the event the Defendant was previously represented by counsel, shall also mail or deliver copies to the Defendant's previous attorney.

#### RULE 213. ARRAIGNMENTS AND ASSIGNMENT FOR TRIAL

After the return of Indictments and case assignments, the presiding Judge shall conduct Arraignments, set Bail, and decide other matters appropriate then. The presiding Judge shall assign all cases for Trial resulting from the previously returned Indictments.

#### **RULE 214. DISQUALIFICATIONS AND RECUSALS**

In all instances where the Judge is disqualified by Motion and Affidavit of a litigant or attorney, the procedure provided by Statute shall be followed. In the event of recusal, absence, or illness of the Judge, the Chief Judge of the Bluegrass Region shall be requested to appoint a special Judge to preside over the case.

#### **RULE 3. ADOPTIONS/TERMINATION OF PARENTAL RIGHTS**

See Family Court Rules of Procedure and Practice (FCRPP) 32 through 36 for statewide uniform rules of procedure relating to Adoptions and Termination of Parental Rights.

#### **RULE 4. DOMESTIC VIOLENCE PROTOCOL AND 24 HOUR ACCESS POLICY.**

See attached Domestic Violence Protocol, Appendix 1, which is incorporated herein by reference as if set out in full.

#### **RULE 5. DOMESTIC RELATIONS PRACTICE**

RULE 501. “Domestic relations” cases are commonly referred to as “family law” cases and include those enumerated in FCRPP 1(2).

(a) Regular Method of Trial for Domestic Relations Actions – Unless the parties move for a Domestic Relations matter to be heard by the Court pursuant to LR23JC 1802 below, all Domestic Relations matters shall be heard orally by the Domestic Relations Commissioner and in compliance with FCRPP 4.

(b) Date, Time, and Place of Hearing – Domestic Relations Hearings shall be held:

- (1) 2<sup>nd</sup> Thursday of each month in Estill County at 1:30 p.m.;
- (2) 2<sup>nd</sup> Friday of each month in Lee County at 1:30 p.m.;
- (3) The last Wednesday of each month in Owsley County at 1:30 p.m.

All Hearings shall be conducted in a suitable Hearing Room in the respective Courthouses unless the parties have specifically agreed to another date, time, and/or place and

the Domestic Relations Commissioner has acquiesced.

(c) Assignment for Hearing

(1) No proceeding shall be heard unless the party requesting such hearing has served written notice seven (7) days before the date of such hearing on the adverse party, notifying such party of the time, place, and purpose of the hearing, unless otherwise agreed by the parties or scheduled by order at the discretion of the Domestic Relations Commissioner.

(2) Consistent with FCRPP 6(4), where there are minor children in any dissolution or custody proceeding, the Court may order the parents or custodians of the children to participate in a parent's education clinic and may order children between the ages of 5 and 18 years to participate in a suitable education class. In such cases, proof of attendance must be submitted before the case is assigned for final hearing.

(3) If there is a domestic violence or restraining order in effect between the parties, then the parties should advise the parent's education clinic coordinator of that fact when calling to schedule attendance of the program.

(4) The parties shall register within 14 days of being ordered to do so. The parent who has physical custody of the children at the time the children are scheduled to attend the program is responsible for insuring that the children attend the program. All parties shall complete the program within 60 days from being ordered to do so.

(5) Fees for the parent's education clinic shall be paid as set by FCRPP 6(4).

(6) If a party refuses or fails to attend a parent's education clinic after being ordered to attend such a clinic, the Court may make such orders in regard to the failure or refusal as are just, and among others, the following: (i) an order refusing to assign a trial date until the party requesting the trial date attends the program; (ii) an order declining to

set or enforce permanent visitation rights for the disobedient party until the disobedient party attends the program; (iii) an order reserving the granting or approval of final custody; and (iv) in lieu of any of the foregoing orders or in addition thereto, after a hearing where the disobedient party has notice and an opportunity to be heard, an order treating as a contempt of court the failure to obey an order to attend the program.

(7) If a party refuses or fails to cause the parties' age-eligible children to attend a suitable education class after being ordered to cause his/her children to attend such a class, the Court may make such orders in regard to the failure or refusal as are just, including but not limited to the following: (i) an order refusing to assign a trial date until the children have attended the program; or (ii) in lieu of the foregoing order or in addition thereto, after a hearing where the disobedient party has notice and an opportunity to be heard, an order treating as a contempt of court the failure to obey an order to cause the children to attend the program.

(8) Each party shall bring his/her case number to the session so that his/her attendance can be properly identified. The cost of the children's session of the education class shall be at the expense of the parties pursuant to FCRPP 6(4).

(d) Recommended Findings and Conclusions – The Domestic Relations Commissioner shall report by making Findings of Fact, Conclusions of Law, and Recommendations to the Court in all dissolution actions pursuant to KRS 454.350(2). Pursuant to FCRPP 4(3), all proceedings before the Commissioner shall be recorded by audio or video, and a recording log shall be kept. The Commissioner's Recommendations shall be filed in the Circuit Clerk's Office no later than thirty (30) days after a Hearing in an uncontested case and no longer than ninety (90) days after a Hearing in a contested case unless otherwise extended for good cause shown by Order of the Circuit Judge.

(e) Exceptions to Recommendations – See FCRPP 4(4).

(f) Temporary Orders – All Hearings for temporary Orders shall receive immediate action by the Commissioner, and he/she shall issue his or her recommendations to all parties or their attorneys within five (5) working days following the Hearing. All other matters shall be acted upon by the Commissioner in an expeditious manner.

(g) Action upon Reports and Exceptions – Action upon the Commissioner's report and upon exceptions thereto shall be by motion and notice pursuant to FCRPP 4(4)(a) and CR 6.04.

(h) Agreements Acknowledged – All agreements between parties filed of record must be signed by both parties and acknowledged before a person authorized to take acknowledgments under KRS 382.140. In the event that a party is represented by counsel, the Agreement must also be signed by counsel.

(i) Other Procedures – Procedures before the Domestic Relations Commissioner not otherwise provided herein shall be in conformity with FCRPP 4.

#### RULE 502. ALTERNATE METHOD OF TRIAL FOR DOMESTIC RELATIONS ACTIONS

(a) Upon motion of any party to a Domestic Relations proceeding, the testimony shall be taken by deposition or interrogatory and submitted to the Court. Otherwise, the matter shall be heard by the Domestic Relations Commissioner as set forth in LR23JC 501 above.

(b) In all matters to be submitted, upon motion to the Court, the proof for the Petitioner shall not be commenced until the time for filing an answer has expired, and said proof shall be completed within four (4) weeks thereafter. The Respondent shall complete his/her proof within the following four (4) weeks. The Petitioner shall then have two (2) weeks in which to complete any rebuttal. The case shall then stand for submission at the next regular Motion Hour/Rule Day.

#### **RULE 503. FACTUAL DISCLOSURE REQUIREMENTS**

Consistent with FCRPP 2(3), in contested dissolution actions, AOC-238, Preliminary Verified Disclosure Statements, shall be exchanged between the parties within 45 days of the service of the petition on the respondent. Objections thereto shall be exchanged 20 days thereafter, but the disclosures shall not be filed in the record unless ordered by the Court or required by local rule. AOC 239, Final Verified Disclosure Statements, are to be provided to the opposing party's attorney or pro se party within 30 days of the filing of a motion for hearing unless the hearing is set within 30 days of the filing of the motion for the hearing, upon which disclosure shall be at the order of the Court. Each such Disclosure Statement, besides being verified by the party filing it, shall bear the signature of that party's attorney. Information contained in Disclosure Statements may be used by the Court or by the parties for any purpose.

#### **RULE 6. MISCELLANEOUS RULES RELATING TO FAMILY LAW PRACTICE**

There are no miscellaneous rules relating to Family Law Practice.

#### **RULE 7. DOCKETS**

##### **RULE 701. CALLS OF DOCKETS**

On such days, at least once each six (6) months, as the Judge may by Order designate, the Clerk, under the supervision of the Judge and in open Court, shall call all the actions on the Civil Docket and the Criminal Docket pending and undisposed of in which no steps or proceedings have been taken within one year. Notice of general calls of the docket shall be given by posting a notice thereof in a conspicuous place in the Clerk's office and by mailing to all attorneys of record in each case to be called a copy of such notice. If none of the parties or their attorneys appear at the time and place stated for the general call and make answer when an action is called, the Court may enter an Order dismissing the action for want of prosecution. If at the call it is shown that the failure to take steps or proceedings is not due to plaintiff's fault or lack of

reasonable diligence on his/her part, the action will hold its place on the Docket. The Court may make such Orders as will facilitate the prompt and just disposition of any action. If an action is at issue, the Court may order a Pre-trial Conference, or may order it set down for final disposition on a specified date, or may place it on a calendar for Trial or Hearing in due course.

**RULE 8. CONSOLIDATION OF ACTIONS**

**RULE 801. DUTIES OF CLERK AND IDENTIFICATION**

When, by Order of the Court, actions are consolidated (not simply where cases are ordered to be heard together), the papers of consolidation shall thereafter be placed by the Clerk in one file and treated as a single action. The Order of Consolidation may designate that style and number under which the action as consolidated shall proceed, but should such Order fail to designate, then the consolidated action shall proceed under the number and style of the action entering the consolidation which was filed first in time, i.e., the one bearing the lowest number.

**RULE 9. DEFAULT JUDGMENTS**

**RULE 901. MANNER OF SEEKING; TIME FOR TAKING**

Except as it conflicts with FCRPP 3(2), a party seeking a Judgment by default where Rules 55.01, 5.01, or 6.03 of the Kentucky Rules of Civil Procedure apply shall file a written application for such a Judgment. The Motion must state whether the relief requested is *In Rem* or *In Personam*, and be accompanied by a proposed judgment; by a Certificate of the moving party that no papers have been served upon him/her by the party in default, or by anyone on his/her behalf; proof of service; an affidavit showing entitlement to relief; and as to individual defendants, a military status affidavit. No Default Judgment shall be taken except on Motion Hour/Rule Day, and counsel for movant need not be present.

**RULE 10. PRE-TRIAL CONFERENCE – CIVIL**

**RULE 1001.** Pre-Trial Conferences shall be held as a matter of course in all Civil Jury actions

and in such Civil Non-Jury actions as the parties or the Court may deem to warrant same.

RULE 1002. Pre-Trial Conferences shall be held at a time and date set by the Court after motion by one of the parties for same.

RULE 1003. Except for good cause shown, or unless otherwise directed by the Court, the parties shall comply with the following before the Pre-Trial Conference:

- (a) Pleadings completed and issues made up;
- (b) Discovery proceedings completed;
- (c) At or before the Pre-Trial Conference, submit written instructions incorporating the parties' then understanding of the issues and the law without prejudice to the right to present further instruction as may be indicated by subsequent proceedings;
- (d) Be prepared to stipulate certain facts on admissibility of certain documents or other evidence, or withdraw certain allegations or defenses appearing in the pleadings whenever possible and if same can be done without prejudice to the presentation of the case by either party;
- (e) In tort actions involving personal injury, be prepared to exchange such medical reports and copies of medical bills or evidence of special damages as are subject to discovery under the Rules of Civil Procedure.

RULE 1004. At a Pre-Trial Conference, any action may be assigned, or reassigned, to a definite date for Trial without the necessity of same being placed on the Motion Docket. In the Pre-Trial Order, the Court may require each party to submit a Trial Brief consisting of a short memorandum of his/her view of the facts and law on which he/she will rely and may fix the time for filing such Briefs.

RULE 1005. Pre-Trial Conferences in all Civil matters, including matters before the Master Commissioner or Domestic Relations Commissioner, may be held by phone conference at the direction of the presiding Judge or Officer.

## **RULE 11. ENTRY OF ORDERS AND JUDGMENTS**

### **RULE 1101. PREPARATION OF ORDERS AND JUDGMENTS**

Whenever any ruling is made, verdict returned, or Judgment rendered, an Order or Judgment in conformity therewith shall forthwith be prepared by the Court unless otherwise ordered. The caption to all Orders shall state the exact nature of the order, such as, for example, Order of Dismissal, Order Fixing Temporary Maintenance, Order Directing Answering of Interrogatories, etc.

### **RULE 1102. PRESENTATION OF ORDER OR JUDGMENT TO THE COURT**

If so ordered the prevailing party shall present the Order or Judgment embodying the decision to the Court:

(a) Upon having the Order or Judgment attested by counsel for all parties thereto as being in conformity with the Court's decision by signature in a space provided just below the body of said Order or Judgment on the left-hand side of the page, and/or by an endorsement of the fact that any party is, or parties are, not represented by counsel, if that is the case;

OR

(b) After the passage of ten (10) days from the date of tendering the original of said Order or Judgment to the Judge, with service of a copy of same upon counsel for all parties, the Order or Judgment will be entered unless written objections thereto including a time for a Hearing scheduled pursuant to these Rules have been filed and served upon all parties and the Court by the objecting party or unless the Court for good reason feels that said Order or Judgment should not be entered, in which case, the Court will notify all counsel of a time and place for a Hearing to be had on the tendered Order or Judgment. The proposed Order or Judgment, for purposes of this paragraph, shall have attached thereto, or typed thereon, a Certificate of Service showing the fact of the tender and service and the date of the same and that

the proposed Order or Judgment will be signed and entered unless written objections have been filed within ten (10) days from the date of service.

#### RULE 1103. NOTICE OF ENTRY; COPIES; WAIVER OF NOTICE

When signed by the Judge, the Order or Judgment shall be delivered to the Clerk for entry. All Orders and Judgments of which the Clerk must give notification shall contain a notation calling to the Clerk's attention the fact that the Order should be served pursuant to CR 77.04.

#### RULE 1104. FAXED COPIES OF ORDERS AND JUDGMENTS

(a) Facsimile copies of Orders and Judgments will be received by the Clerk and entered in the same manner as if they were originals received in the mail. In other words, they will be entered upon receipt. Upon receipt of the original, the Clerk will attach it to the facsimile copy already of record.

(b) The appropriately marked and entered facsimile copy will for all legal requirements be considered the same as if the original had been entered at that time.

### **RULE 12. CONTINUANCES**

#### RULE 1201. WHEN MATTERS ARE TO BE TRIED OR HEARD

All cases set for Trial, Pre-Trial Conference, or Hearing on Motion shall be heard at the time and date specified unless by discretion of the Court or Order on good cause shown same are continued.

#### RULE 1202. JURY TRIALS

(a) In the event that a particular case is settled, in whole or in part, at any time prior to trial by jury, the attorneys of record shall contact the Court and so advise the Court by no later than 4:00 P.M. on Wednesday of the week preceding the trial. If the Court has not been so advised by 4:00 P.M. on Wednesday of the week preceding the trial, then the Circuit Clerk's

Office shall call the jury at 8:00 A.M. the following day, Thursday of the week preceding the trial. Once the jury has been called by the Clerk, the Court will not honor any settlement agreements absent exceptional circumstances.

### **RULE 13. COURT PROCEDURE**

#### **RULE 1301. APPROACHING THE BENCH**

No attorney participating in the Trial of a case shall approach the bench during the Trial without first obtaining permission of the Court.

#### **RULE 1302. COUNSEL TABLES**

Unless the parties agree to the contrary, or unless the Court for cause shown otherwise directs, the Plaintiff or the Commonwealth and counsel will occupy the counsel table to the left of the Court, and the Defendant and counsel will occupy the counsel table to the right of the Court. For multiple parties, the Court shall assign counsel tables.

#### **RULE 1303. ATTORNEY'S ATTIRE**

All attorneys participating in a formal Court proceeding shall wear suitable attire, in keeping with the dignity of the proceeding.

#### **RULE 1304. OBJECTING TO QUESTION OR EVIDENCE**

Counsel objecting to evidence or any other matter during the Trial will make his/her objection, without saying more (except that counsel may seek to be heard), and all counsel to the Trial will await the Court's ruling without comment or proceeding further with the Trial, provided, however, if the Court asks counsel about the point of his objection, the Court will hear counsel out of the hearing of the Jury, and no counsel shall make any statement in the hearing of the Jury concerning such objection made. On violation of this Rule, the Court may, on motion of the non-offending counsel, set aside the swearing of the Jury and continue the case at the cost of the offending party's counsel or take such other action as the Court deems appropriate.

#### RULE 1305. TIME FOR SUMMATIONS

The Court shall fix the amount of time allowed to counsel for each party for Closing Argument in all Jury actions. Counsel for each party may suggest to the Court the time limitation to be placed upon the Closing Arguments. If any party is dissatisfied with the time assigned by the Court for Closing Arguments, objections must be imposed at the time of the ruling by the Court. The Court will keep time on each Argument and advise counsel arguing the case when five minutes of his/her allotted time for arguments remain, and the Court shall stop any Closing Argument that extends more than two (2) minutes beyond the time previously fixed and assigned by the Court.

#### **RULE 14. JURY**

##### RULE 1401. JURY QUALIFICATION FORM AVAILABILITY

Jury Qualification Forms shall be made available by the Clerk to counsel and parties for examination and copying (unless the Court previously determines that, in the interest of justice, such information should be kept confidential, as provided in KRS 29A.070[7]).

##### RULE 1402. JURY QUALIFICATION FORM INFORMATION

Voir dire by counsel concerning information contained in the Jury Qualification Form shall not be permitted except by leave of Court.

##### RULE 1403. JURY SEATING

The Jurors constituting a Trial Jury Panel will take seats corresponding with the numerical order in which they were called and will retain such seats during the voir dire examination until the Jury is finally sworn.

#### **RULE 15. CRIMINAL PROCEDURE**

##### RULE 1501. REPRESENTATION AT ARRAIGNMENT

Both the Defendant and his/her attorney must be present at Arraignment. If incarcerated at the time of Arraignment, the Defendant may appear by video if such appearance can be accomplished with the particular detention facility in which he/she is incarcerated. If the Defendant is not represented by an attorney, the Court shall, before the Arraignment, appoint counsel to represent him/her at the Arraignment. The attorney appearing for the Defendant at the Arraignment shall represent the Defendant in all future stages of the proceedings unless otherwise ordered by the Court. An attorney shall not withdraw from employment after Arraignment in a criminal proceeding without permission of the Court.

#### RULE 1502. PRETRIAL MOTIONS

Motions to suppress evidence and any other Motions by either the Defendant or the Commonwealth that require a hearing in criminal cases shall be noticed to be heard at least 30 days before trial on a regular Motion Hour/Rule Day unless waived in the discretion of the Court for just cause.

#### **RULE 16. APPEARANCE AND SUBSTITUTION OF COUNSEL**

##### RULE 1601. AFTER APPEARANCE AS COUNSEL

Whenever a party has appeared by attorney, he/she may not thereafter appear or act in his/her own behalf in the action, or take any step therein, unless an Order of Substitution shall first have been made by the Court after reasonable notice to the attorney by such party and to any opposite party, provided that the Court may in its discretion hear a party in open court notwithstanding the fact that he/she has appeared or is represented by an attorney.

##### RULE 1602. WITHDRAWAL AS COUNSEL

When an attorney of record desires to cease to act for a party, he/she should move the Court to allow him/her to withdraw as attorney of record. Such motion shall be served on the party as provided by CR 5. Until an Order allowing withdrawal is entered, the attorney of record

shall continue for all proper purposes.

**RULE 17. PRACTICE BEFORE MASTER COMMISSIONER**

**RULE 1701. SERVICE UPON MASTER COMMISSIONER**

All Orders or Judgments involving or requiring action by the Master Commissioner shall be served upon said Commissioner by the Clerk, and such Order or Judgment shall contain a Certificate of the counsel preparing same at the bottom of the last page thereof to the effect that it is an Order or Judgment concerning which the Clerk is required to serve on the Master Commissioner.

**RULE 1702. CONTENTS OF REFERRAL ORDER**

The initial Order or Judgment served upon the Master Commissioner shall contain in the caption or style the names of all parties and shall include in the last page the names and addresses of all counsel and the parties represented, as well as a notation concerning the fact that any parties are not represented by counsel, and in that case, the mailing address of such parties.

**RULE 1703. REPORTS OF MASTER COMMISSIONER**

The Master Commissioner shall, when directed by Order or Judgment to take any action, report the action taken, by a Report or Memorandum, so that the record shall be complete in all respects.

**RULE 18. MEDIATION PROJECT**

**RULE 1801. CASES FOR MEDIATION**

The Judge may, at the completion of the pleadings, or at any other time prior to trial, refer to mediation any civil case except habeas corpus cases, election contests, appeals, or actions for injunctive relief.

#### RULE 1802. REFERRAL TO MEDIATION

(a) The Judge may, by appropriate entry, refer the case to mediation with the consent of the parties.

(b) The mediator may, by placing an appropriate entry of record, refer any case back to the Court because the case is inappropriate, because the parties are not cooperating with the mediator, or for other good cause which shall be provided in writing to the Court.

(c) An order of referral to mediation shall stay all further steps in the civil proceeding, including discovery, unless otherwise ordered. At the conclusion of the mediation, the Court shall enter an appropriate order lifting the stay or dismissing the action.

#### RULE 1803. MEDIATION CONFERENCES

(a) The mediator shall direct the parties and their attorneys to attend a mediation conference(s), either in person or by telephone, at the mediator's discretion. Such a conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator and the parties determine may aid in the handling or the disposition of the proceedings.

(b) Mediation shall continue until the parties have reached a settlement, until they are unwilling to proceed further, or until the mediator determines that further efforts would be futile at that time. The mediator may schedule such sessions as are necessary to complete the process.

(c) The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the sessions, but has no authority to order such production.

#### RULE 1804. CONFIDENTIALITY

(a) All statements made during mediation shall be treated as confidential, regardless of whether they are made by counsel, the mediator, a party, or a witness. No party shall introduce, for any purpose, a statement made during mediation at any civil trial or hearing.

(b) The mediator shall not voluntarily disclose to anyone the contents of mediation discussions except as agreed to by all of the parties or as ordered by the Court.

(c) No party to mediation shall call the mediator as a witness in any civil trial or hearing.

#### RULE 1805. REPORTING TO THE COURT

(a) The mediator shall notify the Court promptly when a case is not accepted for mediation. At the conclusion of cases accepted for mediation, the mediator will report the fact that the mediation process has ended.

(b) If a case is settled during mediation, the attorney for one of the parties shall prepare and submit to the Court an order reflecting the fact of settlement as in any other case.

(c) If some but not all of the issues in the case are settled during mediation, or if agreements are reached to limit discovery or on any other matter, the parties shall submit a joint statement to the Court enumerating the issues that have been resolved and the issues that remain for trial. This statement shall be submitted within thirty (30) days of the termination of mediation. Unsettled cases shall then be returned to the Court's active docket.

### **RULE 19. CLASS D PRE-TRIAL DIVERSION PROTOCOL**

#### RULE 1901. DEFINITION

Pre-trial diversion is the postponement of imposition of sentence upon any person who qualifies for this program for a period of time not to exceed five (5) years subject to certain conditions established by the Court.

#### RULE 1902. PERSONS ELIGIBLE

(a) Any person charged with a Class D Felony offense who has not had a felony conviction for the previous ten (10) years from the commission of the current offense or who has not been on probation or parole or released from felony incarceration within the previous ten (10)

years from the commission of the current offense shall be eligible for pre-trial diversion.

(b) The person charged must enter a plea of guilty (or Alford plea) before becoming eligible for pre-trial diversion.

(c) Persons not eligible for probation, parole, or conditional discharge under KRS 532.045 shall not be eligible for this program.

(d) A person convicted of a felony offense involving driving under the influence shall not be eligible for this program.

(e) No person shall be eligible for this program more than once in any five (5) year period.

(f) No person shall be eligible for this program who has committed a sex crime as defined in KRS 17.500.

#### RULE 1903. PROCEDURE

(a) An eligible person may petition the Circuit Court, with notice to the Commonwealth's Attorney, for the entry of a pre-trial diversion order not less than fourteen (14) days before trial.

(b) In applying for pre-trial diversion, counsel for the defendant must state, and the defendant must agree on the record, that in the event diversion is granted, any right to a speedy trial or disposition of the charge against him/her is waived.

(c) The Commonwealth's Attorney shall make a recommendation to the Court in writing in response to each petition.

(d) Before making a recommendation to the Court, the Commonwealth's Attorney shall:

(1) Have a criminal record check made by telephoning Pretrial Services at the Administrative Office of the Courts (AOC) at 1-800-928-6381 or faxing the request to

(502) 573-1669. **DO NOT** send requests to the local Pretrial Services Officer.

(2) Interview and seek input from the victim and/or the victim's family and advise them of the time, date, and place of the hearing of the petition by the Court; and

(3) Make recommendations to the Court in writing of conditions for pre-trial diversion.

#### RULE 1904. ORDER OF PRE-TRIAL DIVERSION

(a) The Court may, in its discretion, order pre-trial diversion for eligible petitioners upon terms and conditions which it deems appropriate. (AOC Form 345)

(b) The Order of Diversion **shall** include:

(1) Restitution, if applicable;

(2) Whether the diversion shall be supervised or unsupervised (and include supervision fees, if applicable);

(3) Duration of the diversion;

(4) A requirement that the defendant obey all rules and regulations imposed by Probation & Parole; and

(5) As required by KRS 533.030(1) (conditions of probation-restitution), a directive requiring the defendant to not commit any offense during the period of the pre-trial diversion and specifically directing the defendant to comply with any other provisions of KRS 533.030 or any other conditions the Court deems appropriate.

(c) The Order of Diversion **may** include:

(1) That the petitioner remain drug and alcohol free and be subject to random testing;

(2) That the petitioner have no violation of the Penal Code or the Controlled Substances Act; and

(3) That the petitioner possess no firearm or any other deadly weapon.

(d) The duration of pre-trial diversion shall not exceed five (5) years without the agreement of the petitioner. The duration of the diversion shall not be less than the time required to make restitution in full.

#### RULE 1905. VOIDING A DIVERSION ORDER

(a) After a hearing, with notice to the Commonwealth and to the defendant, the Court may void a person's participation in pre-trial diversion upon a showing of failure to comply with the conditions of diversion or a failure to make satisfactory progress. AOC Form 346, styled Order Voiding Pre-trial Diversion of a Class D Felony, was designed for this purpose.

(b) If an order of pre-trial diversion is voided, the defendant shall be sentenced according to law based on his/her prior plea of guilty/plea pursuant to North Carolina v. Alford.

(c) Under KRS 533.256(2), the same criteria applicable to a probation revocation hearing apply to a proceeding to void an order granting diversion. Pursuant to KRE 1101(d)(5), the Rules of Evidence are inapplicable in miscellaneous proceedings such as those revoking probation. A hearing to determine whether an order granting diversion should be voided also constitutes a miscellaneous proceeding, and therefore the Rules of Evidence are inapplicable.

#### RULE 1906. COMPLETION OF DIVERSION PROGRAM

If the defendant successfully completes the provisions of the pre-trial diversion agreement, the charges against the defendant shall be dismissed.

#### **RULE 20. DOUBLE-SIDED DOCUMENTS**

When sending pleadings and motions to the Circuit Clerk and to opposing counsel, attorneys shall prepare such documents to comport with the Rules of Civil Procedure and shall print only on the front side of the paper. With the exception of forms prepared by AOC, no pleadings or motions sent to the Circuit Clerk or to opposing counsel shall be printed on both the

front and the back sides of the paper.

**CERTIFICATE**

These Rules shall become effective upon approval by the Chief Justice. They supersede all previous local rules and orders of the Circuit and District courts for Estill, Lee and Owsley counties of the Commonwealth of Kentucky.

A handwritten signature in black ink, appearing to read "Michael Dean", written over a horizontal line.

MICHAEL DEAN  
JUDGE, 23RD JUDICIAL CIRCUIT

## **APPENDIX 1**

### **TWENTY-FOUR HOUR ACCESSIBILITY TO PROTECTIVE ORDERS AND LOCAL JOINT JURISDICTION PROTOCOL 23<sup>rd</sup> JUDICIAL CIRCUIT AND DISTRICT ESTILL, LEE, AND OWSLEY COUNTIES**

Pursuant to KRS 403.735 and KRS 456.030, and in compliance with Family Court Rule of Practice and Procedure Section IV, this local protective order protocol is established to ensure twenty-four hour accessibility to emergency protective orders (EPOs) and temporary interpersonal protective orders (TIPOs) and to establish written procedures for matters in which there may be joint jurisdiction between the Circuit/Family and District Courts.

#### **I. Uniform Protocol for Handling Cases**

- A. All petitions requested, completed and signed by persons seeking protection under KRS Chapter 403 or KRS Chapter 456 shall be made on form AOC-275.1, and shall be accepted and filed with the court. KRS 403.725, KRS 456.030.
- B. All protective order cases must be processed consistent with the rules and procedures set forth in the Kentucky Circuit Court Clerk's Manual.
- C. All cases will be assigned a "D" case number with the appropriate trailer number within the court case management system and may not be consolidated with any other case type.
- D. "No drop" policies which place limitations on a petitioner's right to modify or withdraw a petition for a protective order are not permitted. Pursuant to KRS 403.740 and KRS 456.060, any orders for relief issued directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, dating violence and abuse, stalking, or sexual assault shall not order the petitioner to take any affirmative action.
- E. Cases may be reassigned within the judicial circuit and, pursuant to FCRPP 12, a case may be transferred to another circuit if there is a pending dissolution or custody matter. If reassignment or transfer occurs, the issuing judge shall re-issue a summons until the matter may be heard by the receiving judge.
- F. The court shall review a petition for a protective order immediately upon its filing. KRS 403.730, KRS 456.040. Petitioners shall not be sent away or left waiting for extended periods of time. Petitions should be reviewed within an hour of presentation to a judge or trial commissioner unless impossible due to no judge or trial commissioner being available.

## II. Twenty-four Hour Accessibility

- A. The following agencies and officers are authorized to take protective order petitions and administer oaths to petitioner **during** regular business hours:

Estill Circuit Clerk, and their Deputies;  
Lee Circuit Clerk, and their Deputies;  
Owsley Circuit Clerk, and their Deputies;  
All Sworn Peace Officers of Any Police Agency;  
Any 911 Dispatcher.

- B. The following agencies and officers are authorized to take protective order petitions and administer oaths to petitioner **after** regular business hours and weekends:

Estill Circuit Clerk, and their Deputies;  
Lee Circuit Clerk, and their Deputies;  
Owsley Circuit Clerk, and their Deputies;  
All Sworn Peace Officers of Any Police Agency;  
Any 911 Dispatcher.

- C. Upon receipt of a petition **during** regular business hours, the authorized agency/officer shall present the petition to the following:

To the Circuit Judge where a divorce or child custody proceeding is pending between Petitioner and Respondent; If the Circuit Judge is unavailable then to the District Judge; If the Circuit and District Judge is unavailable, then to any Trial Commissioner of the 23<sup>rd</sup> District. In all other cases the Petitions shall be submitted to the District Judge first; if the District Judge is unavailable, then to any Trial Commissioner of the 23<sup>rd</sup> District; if the District Judge and Trial Commissioners are unavailable then to the Circuit Judge.

- D. Upon receipt of a petition **after** regular business hours, the authorized agency/officer shall present the petition to:

To the Circuit Judge where a divorce or child custody proceeding is pending between Petitioner and Respondent; If the Circuit Judge is unavailable then to the District Judge; If the Circuit and District Judge is unavailable, then to any Trial Commissioner of the 23<sup>rd</sup> District. In all other cases the Petitions shall be submitted to the District Judge first; if the District Judge is unavailable, then to any Trial Commissioner of the 23<sup>rd</sup> District; if the District Judge and Trial Commissioners are unavailable then to the Circuit Judge.

### **III. Assignment of Cases**

- A. Pursuant to KRS 403.735 and KRS 456.030, jurisdiction over petitions filed under this chapter is concurrent between district, circuit, and family court.
- B. The judge reviewing a petition for an order of protection shall indicate in the "Court Action" section of the petition whether the resulting action is a domestic violence action under KRS Chapter 403 or an interpersonal protective order action under KRS Chapter 456.
- C. The circuit clerk shall assign interpersonal protective order cases to the District Court.
- D. The schedule for hearings on protective orders is as follows:
  - (1) Circuit Court: The next regularly scheduled civil or family Court proceeding before the presiding judge except those cases where the hearing date is more than 14 days following the Court's ruling on an Emergency Protective Order Petition. In those case the matter will be assigned for hearing by the presiding judge on a day within 14 days of the ruling on the Emergency Protective Order Petition.
  - (2) District Court
    - a. Estill County: The Monday before the Second and Fourth Wednesday of each month at 9:00 a.m.; The First, Second, Third, and Fourth Wednesday of each month at 9:00 a.m.
    - a. Lee County: The First, Second, Third, and Fourth Tuesday of each month at 9:30 a.m.
    - c. Owsley County: The First, Second, Third, and Fourth Thursday of each month at 9:30 a.m.
- E. Cases may be reassigned or transferred between courts if it is determined that there are other actions pending or circumstances indicate that review by the other court is proper. KRS 403.725, KRS 456.030. If reassignment or transfer occurs, the issuing judge shall re-issue a summons until the matter may be heard by the receiving judge.

### **IV. Contempt Proceedings**

- A. Pursuant to KRS 403.763 and KRS 456.180, civil and criminal proceedings for violation of a protective order for the same violation of a protective order shall be mutually exclusive. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- B. Petitioners seeking to initiate contempt proceedings should contact:

The Circuit Court Clerk's Office in the County where the EPO/DVO has been issued.

- C. No petitioner may be held in contempt for failure to appear at a domestic violence hearing or prosecute a criminal violation of a protective order.

The undersigned hereby acknowledge that all general orders, forms, policies and procedures relating to domestic violence within the judicial circuit are attached to this protocol and incorporated by reference.

The above protocol is adopted by all judicial officers in the circuit:



Hon. Michael Dean, Circuit Judge

5 / 30 / 2017

Date



Hon. William "Bo" Leach, District Judge

5/25/2017

Date